

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GOVERNMENT EMPLOYEES INSURANCE
COMPANY, GEICO INDEMNITY COMPANY,
GEICO GENERAL INSURANCE COMPANY and
GEICO CASUALTY COMPANY,

Docket No.: 1:20-cv-05786-PKC-SJB

Plaintiffs,

-against-

BIG APPLE MED EQUIPMENT, INC., DAVID
ABAYEV, ALEKSANDR MOSTOVOY, D.C.,
SURESH PAULUS, D.O., ASHLEY KIAEI, D.C.,
PETER MARGULIES, D.C., and JOHN DOE
DEFENDANTS 1-10,

Defendants.
-----X

DECLARATION OF ROBERT BORZONE, D.C., L.A.C, DACBN

Robert Borzone hereby declares the truth of the following pursuant to 28 U.S.C. § 1746:

1. I am a duly licensed chiropractor in the State of New York and a duly licensed acupuncturist in the State of New York.
2. I have been practicing as a chiropractor in private practice in New York for over 35 years. I obtained my Doctor of Chiropractic from New York Chiropractic College in 1983, and earned a Diplomate certification from the National Board of Chiropractic Examiners that same year. A copy of my curriculum vitae is annexed hereto as Exhibit "1".
3. I have been practicing acupuncture in private practice in New York for over 19 years. I obtained my acupuncture degree from the New York College for Holistic Health and Education Research in 1999, and earned a Diplomate certification from the National Certification Commission for Acupuncture and Oriental Medicine that same year.

4. In addition to the foregoing, I completed the AMMA Therapy program at New York College in 1997 and became a certified AMMA therapist that same year. I earned a Diplomate certification in nutrition from the American Board of Nutrition in 2002. I have served as an adjunct faculty member at both Nassau Community College and The State University of New York at Stony Brook, and as an affiliated instructor at Hofstra University's College for Continuing Education. I am also a former faculty member of New York College and served as the Chair of the Western Sciences Department from 1986-1997. I also served as the Academic Dean of the School for Massage Therapy at the New York College for Holistic Health and Education Research from 1995-1999.

5. I have reviewed the treatment records for approximately 150 patients that have been billed to GEICO through Big Apple Med Equipment, Inc. ("Big Apple"). In this regard, I reviewed numerous materials, including examination reports, treatment notes, diagnostic images, prescriptions for durable medical equipment and orthotic devices ("DME"), and associated documents for patients that received DME from Big Apple and for which bills were submitted to GEICO.

6. Based upon my review of the materials described above, I have concluded to a reasonable degree of medical certainty that:

- (i) The prescriptions for DME attached to the bills submitted to GEICO through Big Apple were prescribed pursuant to a predetermined protocol, were not medically necessary for each Insured, and were not based upon any individualized treatment for each Insured.
- (ii) In virtually every case, the Insureds were prescribed virtually identical types of DME regardless of each Insured's individual injuries or presentation.
- (iii) In virtually every case, the patient records do not indicate that the providing practitioners explained the medical necessity or continuing use of the DME identified in the prescriptions attached to the bills submitted to GEICO through Big Apple.

- (iv) In virtually every case, the DME identified in the prescriptions attached to the bills submitted to GEICO through Big Apple were not referenced in any patient record authored by the prescribing provider.
- (v) In many cases, the prescriptions attached to the bills submitted to GEICO through Big Apple contained dates that did not correspond with treatment provided by the prescribing practitioner.
- (vi) In many cases, the prescriptions attached to the bills submitted to GEICO through Big Apple identified DME that was extremely similar to DME previously prescribed by other healthcare providers, and without any explanation in the patient records to indicate the medical necessity of certain DME that is substantially similar to a previously prescribed item.

7. In total, my review of the patient records revealed that the DME provided to Insureds by Big Apple were not medically necessary and were provided as a result of predetermined protocols employed without regard for actual patient care.

8. My review of the bills submitted by Big Apple included prescriptions that were issued by healthcare providers, including Aleksandr Mostovoy, D.C. ("Mostovoy"), Suresh Paulus, D.O. ("Paulus"), Ashley Kiaei, D.C. ("Kiaei"), and Peter Margulies, D.C. ("Margulies").

9. From my review of the records, I observed that virtually every patient received two items of DME from Big Apple. Specifically, the DME included: (i) a cervical traction unit; and (ii) a lumbar sacral orthotic brace that contained anterior, posterior, and lateral panels, which was required to be custom-fitted to each patient. Virtually every patient receiving the same specific type of DME supports my conclusion that the DME by Big Apple was not medically necessary and provided pursuant to a predetermined protocol.

10. My review of the bills from Big Apple, the prescriptions issued by Mostovoy, and the corresponding patient records show that regardless of the type of injuries each patient received, Mostovoy virtually always prescribed patients with both items of DME, regardless of each patient's individualized symptoms or presentation.

11. My review of the bills from Big Apple, the prescriptions issued by Paulus, and the corresponding patient records show that regardless of the type of injuries each patient received, Paulus virtually always prescribed patients with both items of DME, regardless of each patient's individualized symptoms or presentation.

12. My review of the bills from Big Apple, the prescriptions issued by Kiaei, and the corresponding patient records show that regardless of the type of injuries each patient received, Kiaei virtually always prescribed patients with both items of DME, regardless of each patient's individualized symptoms or presentation.

13. My review of the bills from Big Apple, the prescriptions issued by Margulies, and the corresponding patient records show that regardless of the type of injuries each patient received, Margulies virtually always prescribed patients with both items of DME, regardless of each patient's individualized symptoms or presentation.

14. In also keeping with my findings that the prescriptions for DME were issued as part of a predetermined protocol and were not medically necessary, I observed that the prescriptions by Kiaei and by Margulies that were attached to the bills submitted by Big Apple contained photocopied signatures.

15. My further review of the treatment records from the practitioners who provided the prescriptions that were attached to the bills submitted to GEICO from Big Apple, including Mostovoy, Paulus, Kiaei, and Margulies, reveal that the patient treatment records do not indicate any reason why DME was prescribed. Even more, the prescriptions were typically written on dates that the prescriber did not conduct an examination or other evaluation of the patient.

16. In keeping with my conclusion that the prescriptions for DME provided to Big Apple were medically unnecessary, the practitioners' treatment records did not mention – in any

general or specific manner – that DME was to be prescribed or was prescribed. The absence of any notations in medical records of DME that was provided by Big Apple is further evidence that the DME was not medically necessary. In fact, the failure of the prescriber to include any notations in the medical records that DME was prescribed questions the legitimacy of the prescriptions all together.

17. My further review of the treatment records from the practitioners who provided the prescriptions that were attached to the bills submitted to GEICO from Big Apple revealed that the patients were prescribed DME that was contrary to their treatment plans. For example, patients were regularly prescribed lumbar sacral orthotics, which is used to restrict movement in the lumbar spine, when those patients were also prescribed active physical therapy to increase movement and stretching of the same part of their body.

18. The issues discussed in this declaration are not an exhaustive recitation of all information I have reviewed, am aware of, and may to testify to at trial.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York on February 10 2021.


Robert Borzone, D.C., L.Ac., DACBN

EXHIBIT 1

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Dr. Robert Borzone, D.C., L.Ac.
575 Underhill Blvd, Suite 126
Syosset, NY 11791
(516) 802-4500

CURRICULUM VITAE

EDUCATION

- Doctor of Chiropractic, New York Chiropractic College 1983
- Licensed Acupuncturist, New York College for Wholistic Health Education and Research, 1999
- Certified AMMA Therapist, New York College 1997
- Bachelor of Arts in Biology with Chemistry Minor, Rider College 1978

PROFESSIONAL EXPERIENCE

- Private practice in Chiropractic, Acupuncture, AMMA Therapy®, Craniosacral Therapy and Nutritional Counseling, 1983 to present
- Adjunct Faculty Member, Nassau Community College, Allied Health Sciences and Biology Departments (Anatomy and Physiology, 1982 and Human Nutrition and General Biology 2000 to present respectively)
- Adjunct Faculty Member, State University of New York at Stony Brook, School of Social Welfare, teaching courses on Complementary and Alternative Medicine and Ancestral Medicine, 1996 to 2016
- Affiliated Instructor, Hofstra University, College for Continuing Education, teaching courses on Nutrition, Back Care and Chinese Medicine, 1999 to present
- Consultant/Expert Opinion on Acupuncture for GEICO and State Farm Insurance, 2012 to present
- National Lecturer for Integrative Therapeutics Incorporated, 2002, “The Brain Gut Connection: The Comprehensive Management of Functional Gastrointestinal Disorders”
- Presenter of seminars on Nutrition, Craniosacral Therapy, Myofascial Therapy and AMMA Therapy®, 1986 to present

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PROFESSIONAL EXPERIENCE (continued)

- Chair of the Joint Council for Massage Schools and Organizations, 1998-1999
- Academic Dean of the School for Massage Therapy at the New York College for Wholistic Health Education and Research, Syosset, New York, 1995-1999
- Chair of the Western Science Department, New York College, 1986-1997
- Chiropractor, AMMA Therapist, Craniosacral Therapist and Nutritional Counselor at the Wholistic Health Center (New York College), 1984-1999
- Faculty Member, New York College, Schools of Acupuncture, Oriental Medicine, Wholistic Nursing, Massage Therapy and Advanced AMMA Therapy®. Instructor of Anatomy, Physiology, Neurology, Myology, Pathology, Western Nutrition, Eastern Nutrition, Introduction to Traditional Chinese Medicine, Oriental Anatomy and Physiology, Oriental Clinical Assessment, Clinical Application of Wholistic Medicine, AMMA Therapy® Technique, Bodywork Modalities, T'ai Chi Chuan and Clinic Supervisor, 1984-1999
- Developed Associate Degree Program and core curriculum for Massage Therapy School and assisted in development of Master's Degree Program in Oriental Medicine at the New York College, 1986-1999
- Diplomate of the National Board of Chiropractic Examiners, since 1982
- Diplomate in Acupuncture, National Certification Commission for Acupuncture and Oriental Medicine, since 1999
- Diplomate in Nutrition, American Clinical Board of Nutrition, 2002- 2019
- Approved provider for Continuing Education Programming, National Certification Board for Therapeutic Massage and Bodywork
- New York Department of Education: Item writer for Licensing Exam for Massage Therapists
- National Certification Commission for Acupuncture and Oriental Medicine, Oriental Bodywork Therapists National Certification Examination- Credential Reviewer

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PROFESSIONAL EXPERIENCE (continued)

- National Certification Board for Therapeutic Massage and Bodywork
Examination: Item writer
- Clinic Supervisor of the Hospital Outreach Program for South Nassau Community Hospital and the New York College, 1995-1996
- Certified Instructor, AMMA Therapy®, Association of Bodywork Therapies of Asia
- Certified Cox® Flexion-Distraction Technique Practitioner

PUBLICATIONS

Consultant Editor, Chiropractic chapter, Alternatives in Healing, by Simon Mills, M.A., New American Library, New York, 1988

Author of “Nutrition: Evolution, Theory and Practice” chapter in AMMA Therapy®: A Complete Textbook of Oriental Bodywork and Medical Principles, by Tina Sohn, Inner Traditions International, Ltd., Vermont, 1996

Article in Nutritional Perspectives, Journal of the Council on Nutrition of the American Chiropractic Association, “Functional Gastrointestinal Disorders and the Enteric Nervous System”, April 2006

Flexion/Distraction in the Treatment of DISH in a Patient with Hip and Groin Pain, Journal of Contemporary Chiropractic, Vol 1, No 1, Page 30-35, 2018

PUBLIC SPEAKING

Guest lecturer on Nutrition, Wholistic Health, Oriental Medicine, Bodywork, Complementary Medicine, Back Care, T'ai Chi Chuan, careers in Alternative Medicine, at:

- Area Colleges: York College, Hofstra University, CW Post University, Suffolk Community College, Queensborough College

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PUBLIC SPEAKING (continued)

- Various Medical Groups: Pilgrim State Psychiatric Hospital, Greater Long Island Dental Association, Long Island Breast Cancer Coalition, Long Island Society for Parental and Enteral Nutrition, Suffolk Chapter of the American Parkinson's Disease Association, Plainview-Old Bethpage Breast Cancer Coalition
- Businesses and Insurance Companies: Exxon Corporation, Estee Lauder, New York Central General Mutual Insurance Company, GE Assurance Company, National Claims Evaluations Incorporated
- Area High Schools, Churches and Temples, other Community Organizations

LICENSURE

- Chiropractic: New York, New Jersey, Florida
- Acupuncture: New York

PERSONAL

- Married, two daughters
- Residence: Syosset, NY